

AMENDED IN SENATE JULY 1, 2008  
AMENDED IN ASSEMBLY MAY 5, 2008  
AMENDED IN ASSEMBLY APRIL 23, 2008  
AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2097**

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**Introduced by Assembly Member Coto**

February 19, 2008

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An act to amend Section 33334.2 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2097, as amended, Coto. Low and Moderate Income Housing Fund: ~~emergency shelters and~~ supportive services: *Santa Clara County*.

The Community Redevelopment Law requires that not less than 20% of the tax-increment revenue allocated to a redevelopment agency be used to increase, improve, and preserve the supply of the community's low- and moderate-income housing within the territorial jurisdiction of the agency, and for this purpose, the funds are held in a separate Low and Moderate Income Housing Fund. The agency is authorized to exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low, and moderate-income persons or families, including certain listed activities.

This bill would authorize a redevelopment agency, ~~on or before January 1, 2014,~~ *that is located within Santa Clara County* to use, *on or before January 1, 2014,* not more than 5% of the funds in the Low

and Moderate Income Housing Fund to provide supportive services to certain low-income occupants of new permanent housing who are eligible for assistance based on disability. *The bill would require the agency to report to the Assembly Committee on Housing and Community Development and the Senate Committee on Transportation and Housing, on or before March 31, 2013, regarding its use of funds for these purposes.*

*The bill would make legislative findings regarding the need for special legislation.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 33334.2 of the Health and Safety Code  
2 is amended to read:

3 33334.2. (a) Not less than 20 percent of all taxes that are  
4 allocated to the agency pursuant to Section 33670 shall be used  
5 by the agency for the purposes of increasing, improving, and  
6 preserving the community's supply of low- and moderate-income  
7 housing available at affordable housing cost, as defined by Section  
8 50052.5, to persons and families of low or moderate income, as  
9 defined in Section 50093, lower income households, as defined  
10 by Section 50079.5, very low income households, as defined in  
11 Section 50105, and extremely low income households, as defined  
12 by Section 50106, that is occupied by these persons and families,  
13 unless one of the following findings is made annually by resolution:

14 (1) (A) That no need exists in the community to improve,  
15 increase, or preserve the supply of low- and moderate-income  
16 housing, including housing for very low income households in a  
17 manner that would benefit the project area and that this finding is  
18 consistent with the housing element of the community's general  
19 plan required by Article 10.6 (commencing with Section 65580)  
20 of Chapter 3 of Division 1 of Title 7 of the Government Code,  
21 including its share of the regional housing needs of very low  
22 income households and persons and families of low or moderate  
23 income.

24 (B) This finding shall only be made if the housing element of  
25 the community's general plan demonstrates that the community  
26 does not have a need to improve, increase, or preserve the supply

1 of low- and moderate-income housing available at affordable  
2 housing cost to persons and families of low or moderate income  
3 and to very low income households. This finding shall only be  
4 made if it is consistent with the planning agency's annual report  
5 to the legislative body on implementation of the housing element  
6 required by subdivision (b) of Section 65400 of the Government  
7 Code. No agency of a charter city shall make this finding unless  
8 the planning agency submits the report pursuant to subdivision (b)  
9 of Section 65400 of the Government Code. This finding shall not  
10 take effect until the agency has complied with subdivision (b) of  
11 this section.

12 (2) (A) That some stated percentage less than 20 percent of the  
13 taxes that are allocated to the agency pursuant to Section 33670  
14 is sufficient to meet the housing needs of the community, including  
15 its share of the regional housing needs of persons and families of  
16 low- or moderate-income and very low income households, and  
17 that this finding is consistent with the housing element of the  
18 community's general plan required by Article 10.6 (commencing  
19 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
20 Government Code.

21 (B) This finding shall only be made if the housing element of  
22 the community's general plan demonstrates that a percentage of  
23 less than 20 percent will be sufficient to meet the community's  
24 need to improve, increase, or preserve the supply of low- and  
25 moderate-income housing available at affordable housing cost to  
26 persons and families of low or moderate income and to very low  
27 income households. This finding shall only be made if it is  
28 consistent with the planning agency's annual report to the  
29 legislative body on implementation of the housing element required  
30 by subdivision (b) of Section 65400 of the Government Code. No  
31 agency of a charter city shall make this finding unless the planning  
32 agency submits the report pursuant to subdivision (b) of Section  
33 65400 of the Government Code. This finding shall not take effect  
34 until the agency has complied with subdivision (b) of this section.

35 (C) For purposes of making the findings specified in this  
36 paragraph and paragraph (1), the housing element of the general  
37 plan of a city, county, or city and county shall be current, and shall  
38 have been determined by the department pursuant to Section 65585  
39 to be in substantial compliance with Article 10.6 (commencing

1 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
2 Government Code.

3 (3) (A) That the community is making a substantial effort to  
4 meet its existing and projected housing needs, including its share  
5 of the regional housing needs, with respect to persons and families  
6 of low and moderate income, particularly very low income  
7 households, as identified in the housing element of the  
8 community's general plan required by Article 10.6 (commencing  
9 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
10 Government Code, and that this effort, consisting of direct financial  
11 contributions of local funds used to increase and improve the  
12 supply of housing affordable to, and occupied by, persons and  
13 families of low or moderate income and very low income  
14 households is equivalent in impact to the funds otherwise required  
15 to be set aside pursuant to this section. In addition to any other  
16 local funds, these direct financial contributions may include federal  
17 or state grants paid directly to a community and that the community  
18 has the discretion of using for the purposes for which moneys in  
19 the Low and Moderate Income Housing Fund may be used. The  
20 legislative body shall consider the need that can be reasonably  
21 foreseen because of displacement of persons and families of low  
22 or moderate income or very low income households from within,  
23 or adjacent to, the project area, because of increased employment  
24 opportunities, or because of any other direct or indirect result of  
25 implementation of the redevelopment plan. No finding under this  
26 subdivision may be made until the community has provided or  
27 ensured the availability of replacement dwelling units as defined  
28 in Section 33411.2 and until it has complied with Article 9  
29 (commencing with Section 33410).

30 (B) In making the determination that other financial  
31 contributions are equivalent in impact pursuant to this subdivision,  
32 the agency shall include only those financial contributions that are  
33 directly related to programs or activities authorized under  
34 subdivision (e).

35 (C) The authority for making the finding specified in this  
36 paragraph shall expire on June 30, 1993, except that the expiration  
37 shall not be deemed to impair contractual obligations to  
38 bondholders or private entities incurred prior to May 1, 1991, and  
39 made in reliance on the provisions of this paragraph. Agencies that  
40 make this finding after June 30, 1993, shall show evidence that

1 the agency entered into the specific contractual obligation with  
2 the specific intention of making a finding under this paragraph in  
3 order to provide sufficient revenues to pay off the indebtedness.

4 (b) Within 10 days following the making of a finding under  
5 either paragraph (1) or (2) of subdivision (a), the agency shall send  
6 the Department of Housing and Community Development a copy  
7 of the finding, including the factual information supporting the  
8 finding and other factual information in the housing element that  
9 demonstrates that either (1) the community does not need to  
10 increase, improve, or preserve the supply of housing for low- and  
11 moderate-income households, including very low income  
12 households, or (2) a percentage less than 20 percent will be  
13 sufficient to meet the community's need to improve, increase, and  
14 preserve the supply of housing for low- and moderate-income  
15 households, including very low income households. Within 10  
16 days following the making of a finding under paragraph (3) of  
17 subdivision (a), the agency shall send the Department of Housing  
18 and Community Development a copy of the finding, including the  
19 factual information supporting the finding that the community is  
20 making a substantial effort to meet its existing and projected  
21 housing needs. Agencies that make this finding after June 30, 1993,  
22 shall also submit evidence to the department of its contractual  
23 obligations with bondholders or private entities incurred prior to  
24 May 1, 1991, and made in reliance on this finding.

25 (c) In any litigation to challenge or attack a finding made under  
26 paragraph (1), (2), or (3) of subdivision (a), the burden shall be  
27 upon the agency to establish that the finding is supported by  
28 substantial evidence in light of the entire record before the agency.  
29 If an agency is determined by a court to have knowingly  
30 misrepresented any material facts regarding the community's share  
31 of its regional housing need for low- and moderate-income housing,  
32 including very low income households, or the community's  
33 production record in meeting its share of the regional housing need  
34 pursuant to the report required by subdivision (b) of Section 65400  
35 of the Government Code, the agency shall be liable for all court  
36 costs and plaintiff's attorney's fees, and shall be required to allocate  
37 not less than 25 percent of the agency's tax increment revenues to  
38 its Low and Moderate Income Housing Fund in each year  
39 thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) (A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (ii) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

(B) If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, extremely low income households, as defined by Section 50106, very low income

1 households, as defined by Section 50105, lower income  
2 households, as defined by Section 50079.5, or persons and families  
3 of low or moderate income, as defined by Section 50093, to the  
4 extent those households cannot obtain housing at affordable costs  
5 on the open market. Housing units available on the open market  
6 are those units developed without direct government subsidies.

7 (9) Develop plans, pay principal and interest on bonds, loans,  
8 advances, or other indebtedness, or pay financing or carrying  
9 charges.

10 (10) Maintain the community's supply of mobilehomes.

11 (11) Preserve the availability to lower income households of  
12 affordable housing units in housing developments that are assisted  
13 or subsidized by public entities and that are threatened with  
14 imminent conversion to market rates.

15 (12) (A) On or before January 1, 2014, and notwithstanding  
16 subdivision (d) of Section 33334.3, an agency *that is located within*  
17 *Santa Clara County* may use not more than 5 percent of the taxes  
18 that are required to be used for increasing, improving, and  
19 preserving the community's supply of low- and moderate-income  
20 housing under this section for supportive services, as defined in  
21 subparagraph (B), subject to all of the following requirements:

22 (i) The agency or a local jurisdiction including the agency has  
23 adopted a 10-year plan for ending chronic homelessness.

24 (ii) The supportive services are to be used solely for the benefit  
25 of occupants of new permanent units.

26 (iii) The new permanent units are to be occupied by persons or  
27 families with less than extremely low incomes, as defined by  
28 Section 50106.

29 (B) For purposes of this paragraph, "supportive services" means  
30 onsite or offsite services provided to a target population, as defined  
31 in subdivision (d) of Section 53260, that assist the occupant of the  
32 new permanent unit to retain that housing, improve his or her health  
33 status, and maximize his or her ability to live and, when possible,  
34 work in the community. These new permanent units may include  
35 apartments, single-room occupancy residences, or single-family  
36 homes.

37 (C) *An agency that spends funds under this paragraph shall*  
38 *report to the Assembly Committee on Housing and Community*  
39 *Development and the Senate Committee on Transportation and*  
40 *Housing, on or before March 31, 2013, regarding its use of funds*

1 *for the purposes of this paragraph. The report shall include all of*  
2 *the following:*

3 *(i) The number of individuals assisted.*

4 *(ii) An assessment, and the basis for the assessment, of whether*  
5 *the supportive services provided enabled those individuals to retain*  
6 *their housing units, improve their health status, and maximize their*  
7 *ability to live and work in the community.*

8 *(iii) An accounting of funds used for supportive services that*  
9 *otherwise would have been used to increase, improve, and preserve*  
10 *the community's supply of affordable housing.*

11 (f) The agency may use these funds to meet, in whole or in part,  
12 the replacement housing provisions in Section 33413. However,  
13 nothing in this section shall be construed as limiting in any way  
14 the requirements of that section.

15 (g) (1) The agency may use these funds inside or outside the  
16 project area. The agency may only use these funds outside the  
17 project area upon a resolution of the agency and the legislative  
18 body that the use will be of benefit to the project. The  
19 determination by the agency and the legislative body shall be final  
20 and conclusive as to the issue of benefit to the project area. The  
21 Legislature finds and declares that the provision of replacement  
22 housing pursuant to Section 33413 is always of benefit to a project.  
23 Unless the legislative body finds, before the redevelopment plan  
24 is adopted, that the provision of low- and moderate-income housing  
25 outside the project area will be of benefit to the project, the project  
26 area shall include property suitable for low- and moderate-income  
27 housing.

28 (2) (A) The Contra Costa County Redevelopment Agency may  
29 use these funds anywhere within the unincorporated territory, or  
30 within the incorporated limits of the City of Walnut Creek on sites  
31 contiguous to the Pleasant Hill BART Station Area Redevelopment  
32 Project area. The agency may only use these funds outside the  
33 project area upon a resolution of the agency and board of  
34 supervisors determining that the use will be of benefit to the project  
35 area. In addition, the agency may use these funds within the  
36 incorporated limits of the City of Walnut Creek only if the agency  
37 and the board of supervisors find all of the following:

38 (i) Both the County of Contra Costa and the City of Walnut  
39 Creek have adopted and are implementing complete and current  
40 housing elements of their general plans that the Department of



1 Housing and Community Development has determined to be in  
2 compliance with the requirements of Article 10.6 (commencing  
3 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
4 Government Code.

5 (ii) The development to be funded shall not result in any  
6 residential displacement from the site where the development is  
7 to be built.

8 (iii) The development to be funded shall not be constructed in  
9 an area that currently has more than 50 percent of its population  
10 comprised of racial minorities or low-income families.

11 (iv) The development to be funded shall allow construction of  
12 affordable housing closer to a rapid transit station than could be  
13 constructed in the unincorporated territory outside the Pleasant  
14 Hill BART Station Area Redevelopment Project.

15 (B) If the agency uses these funds within the incorporated limits  
16 of the City of Walnut Creek, all of the following requirements  
17 shall apply:

18 (i) The funds shall be used only for the acquisition of land for,  
19 and the design and construction of, the development of housing  
20 containing units affordable to, and occupied by, low- and  
21 moderate-income persons.

22 (ii) If less than all the units in the development are affordable  
23 to, and occupied by, low- or moderate-income persons, any agency  
24 assistance shall not exceed the amount needed to make the housing  
25 affordable to, and occupied by, low- or moderate-income persons.

26 (iii) The units in the development that are affordable to, and  
27 occupied by, low- or moderate-income persons shall remain  
28 affordable for a period of at least 55 years.

29 (iv) The agency and the City of Walnut Creek shall determine,  
30 if applicable, whether Article XXXIV of the California Constitution  
31 permits the development.

32 (h) The Legislature finds and declares that expenditures or  
33 obligations incurred by the agency pursuant to this section shall  
34 constitute an indebtedness of the project.

35 (i) This section shall only apply to taxes allocated to a  
36 redevelopment agency for which a final redevelopment plan is  
37 adopted on or after January 1, 1977, or for any area that is added  
38 to a project by an amendment to a redevelopment plan, which  
39 amendment is adopted on or after the effective date of this section.

40 An agency may, by resolution, elect to make all or part of the

1 requirements of this section applicable to any redevelopment  
2 project for which a redevelopment plan was adopted prior to  
3 January 1, 1977, subject to any indebtedness incurred prior to the  
4 election.

5 (j) (1) (A) An action to compel compliance with the  
6 requirement of Section 33334.3 to deposit not less than 20 percent  
7 of all taxes that are allocated to the agency pursuant to Section  
8 33670 in the Low and Moderate Income Housing Fund shall be  
9 commenced within 10 years of the alleged violation. A cause of  
10 action for a violation accrues on the last day of the fiscal year in  
11 which the funds were required to be deposited in the Low and  
12 Moderate Income Housing Fund.

13 (B) An action to compel compliance with the requirement of  
14 this section or Section 33334.6 that money deposited in the Low  
15 and Moderate Income Housing Fund be used by the agency for  
16 purposes of increasing, improving, and preserving the community's  
17 supply of low- and moderate-income housing available at  
18 affordable housing cost shall be commenced within 10 years of  
19 the alleged violation. A cause of action for a violation accrues on  
20 the date of the actual expenditure of the funds.

21 (C) An agency found to have deposited less into the Low and  
22 Moderate Income Housing Fund than mandated by Section 33334.3  
23 or to have spent money from the Low and Moderate Income  
24 Housing Fund for purposes other than increasing, improving, and  
25 preserving the community's supply of low- and moderate-income  
26 housing, as mandated, by this section or Section 33334.6 shall  
27 repay the funds with interest in one lump sum pursuant to Section  
28 970.4 or 970.5 of the Government Code or may do either of the  
29 following:

30 (i) Petition the court under Section 970.6 for repayment in  
31 installments.

32 (ii) Repay the portion of the judgment due to the Low and  
33 Moderate Income Housing Fund in equal installments over a period  
34 of five years following the judgment.

35 (2) Repayment shall not be made from the funds required to be  
36 set aside or used for low- and moderate-income housing pursuant  
37 to this section.

38 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of  
39 paragraph (1), all costs, including reasonable attorney's fees if

1 included in the judgment, are due and shall be paid upon entry of  
2 judgment or order.

3 (4) Except as otherwise provided in this subdivision, Chapter  
4 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title  
5 1 of the Government Code for the enforcement of a judgment  
6 against a local public entity applies to a judgment against a local  
7 public entity that violates this section.

8 (5) This subdivision applies to actions filed on and after January  
9 1, 2006.

10 (6) The limitations period specified in subparagraphs (A) and  
11 (B) of paragraph (1) does not apply to a cause of action brought  
12 pursuant to Chapter 9 (commencing with Section 860) of Title 10  
13 of Part 2 of the Code of Civil Procedure.

14 *SEC. 2. Due to the unique circumstances of the County of Santa*  
15 *Clara with respect to its Low and Moderate Income Housing Fund*  
16 *and the need for supportive services, the Legislature finds and*  
17 *hereby declares that a general statute cannot be made applicable*  
18 *within the meaning of Section 16 of Article IV of the California*  
19 *Constitution. Therefore, the special legislation contained in Section*  
20 *1 of this act is necessarily applicable only in the County of Santa*  
21 *Clara.*